

share its customer's local CPNI with its interLATA affiliate when the affiliate is providing interLATA services to such customer without first obtaining customer approval . . . ." Sprint at 6.

As AT&T and others showed and as Commissioner Ness' dissent to the *CPNI Order* confirms, the Commission's holding with respect to the BOCs simply cannot be reconciled with Section 272 because, under the FCC's "total service" CPNI approach, while the BOC and its long distance affiliate will be able to share the customer's CPNI without explicit customer consent, an unaffiliated third party long distance provider would need to obtain the customer's affirmative written consent to gain access to BOC CPNI. This special advantage on BOC use of local CPNI for marketing of long distance services contravenes the safeguards in Section 272 of the Act. AT&T at 23; MCI at 6-11; Sprint at 6-8.

CompTel (at 3, 6) shows that Section 272(c)(1)'s nondiscrimination safeguards extend to any information that a BOC gives to its Section 272 affiliate. In the *CPNI Order* (paras. 160-162), the Commission anomalously concludes that there is an apparent conflict between Sections 222 and 272. CompTel at 3. Quite the contrary, to satisfy the types of concerns noted above, "Congress crafted section 272 to ensure that certain BOC affiliates do not gain marketplace advantages -- including information advantages -- over competitors by virtue of the section 272 affiliate's relationship with the BOC." CompTel at 7-8.

Moreover, as MCI explains (at 8), contrary to the Commission's findings, there is no inconsistency between the

consumer privacy protections of Section 222(c)(1) and the nondiscrimination provisions of Section 272. Because 222(c)(1)'s limitations on use and disclosure of CPNI are expressly modified by its "except as required by law" provision, any disclosure compelled by Section 272 cannot violate any consumer privacy rights under Section 222. Alternatively, the Commission can reconcile its customer privacy concerns with the Congress' nondiscrimination requirements simply by ensuring that BOC affiliates could not obtain access to the CPNI of BOC customers without first obtaining affirmative written consent from those customers, as any unaffiliated carrier would need to do.

ILECs can leverage their local CPNI not only into the long distance but also into the wireless services market. In the wireless context, the Commission has recognized that the ability of a LEC "to use CPNI obtained from the wireline service for marketing purposes is clearly a competitive advantage the BOC CMRS providers would be interested in utilizing, and other carriers are equally anxious to obtain."<sup>20</sup> The CPNI Order is contrary to the Commission's findings in recent orders, as to the

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<sup>20</sup> Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, WT Docket No. 96-162, Report and Order, 12 FCC Rcd. 15668, paras. 95,; 48, 58 (1997) ("*LEC-CMRS Safeguards Order*") (recognizing the competitive advantage gained by ILEC use of wireline CPNI to benefit its wireless affiliate). The FCC cannot credibly claim that the CPNI Order (para. 188) adequately protects the BOCs' wireless competitors when it has eliminated Section 22.903(f), which would require some evenhandedness between a BOC and its affiliated wireless carrier and nonaffiliated wireless service providers. Comcast at 21.

competitive advantage ILECs (whether BOCs or not) enjoy if they can leverage their local monopoly into wireless or long distance markets.<sup>21</sup>

Given its conflict with Section 272, the Commission's ruling as to BOC use of CPNI must be promptly reconsidered.<sup>22</sup> As Comcast demonstrates (at 22), the Commission simply cannot permit BOCs or, indeed, other ILECs "to capitalize on local exchange CPNI in a 'total service' relationship when the ILEC's access to that CPNI evolved through a regulated monopoly rather than by a customer's free choice."

To address these competitive concerns, AT&T agrees with MCI (at 18-19) that the explicit nondiscrimination requirements, which AT&T and others have urged pertain to BOC use of local CPNI for long distance per Section 272,<sup>23</sup> should apply to all ILECs'

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<sup>21</sup> LEC-CMRS Safeguards Order, supra; Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket Nos. 96-149 and 96-61, 12 FCC Rcd. 15756, para. 7 (1997) ("LEC Provision of Interexchange Services Order").

<sup>22</sup> Although AT&T could not simultaneously pursue reconsideration and judicial review of the *CPNI Order*, a failure on the part of the Commission to remedy this critical defect will inevitably result in court action. Moreover, any Commission failure to enforce Section 272 nondiscrimination requirements in the context of a grant of a BOC application for in-region long distance entry under Section 271, will thus generate the need for immediate extraordinary relief.

<sup>23</sup> See AT&T Comments, CC Docket No. 96-115, filed March 17, 1997 (as to express delineation of BOC CPNI obligations under Sections 272 and 274).

use of local CPNI under Sections 201(b) and 202(a) of the Act.<sup>24</sup> Under this approach, no ILEC would be permitted to use CPNI or other customer information for marketing long distance or wireless services without making the same information available to competitors under the same circumstances, unless its long distance or wireless affiliate obtained affirmative written consent from the customer just as an unaffiliated third party would have to do to gain access to that customer's ILEC CPNI. This will ensure that ILECs are not able to gain an anticompetitive advantage in competitive markets by exploiting their local monopoly CPNI.

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<sup>24</sup> These sections, along with Sections 4(i), 251(c), 303(r) of the Act, provide ample authority for the FCC to achieve this result with respect to all ILECs' use of CPNI. LCI at 15.

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**CONCLUSION**

For the reasons stated above and in AT&T's Petition for Reconsideration and/or Clarification, the Commission should reconsider and clarify its newly adopted CPNI rules.

Respectfully submitted,

AT&T CORP.

By /s/

*Judy Sello*

Mark C. Rosenblum

Judy Sello

Room 3245I1

295 North Maple Avenue

Basking Ridge, New Jersey 07920

(908) 221-8984

Its Attorneys

June 25, 1998

**CERTIFICATE OF SERVICE**

I, Viola J. Carlone, do hereby certify that on this 25<sup>th</sup> day of June, 1998, a copy of the foregoing AT&T Opposition to and Comments on Petitions for Reconsideration was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

Viola J. Carlone  
Viola J. Carlone

## SERVICE LIST

Cheryl A. Tritt  
James A. Casey  
Morrison & Foerster, LLP  
2000 Pennsylvania Ave., NW  
Washington, DC 20006-1888  
Attorneys for 360° Communications  
Company

Glenn S. Rabin  
ALLTEL Corporate Services, Inc.  
Suite 220  
655 15<sup>th</sup> Street, NW  
Washington, DC 20005

Michael S. Pabian  
Ameritech  
Room 4H82  
2000 W. Ameritech Center Dr.  
Hoffman Estates, IL 60196-1025

Lawrence W. Katz  
Bell Atlantic Telephone  
Companies  
8<sup>th</sup> Floor  
1320 N. Court House Road  
Arlington, VA 22201

M. Robert Sutherland  
A. Kirven Gilbert III  
BellSouth Corporation  
Suite 1700  
1155 Peachtree Street, NE  
Atlanta, GA 30309-3610

Michael F. Altschul  
Randall S. Coleman  
Cellular Telecommunications  
Industry Association  
Suite 200  
1250 Connecticut Avenue, NW  
Washington, DC 20036

Jeffrey E. Smith  
Comcast Cellular  
Communications, Inc.  
480 E. Swedesford Road  
Wayne, PA 19087

Leonard J. Kennedy  
Laura H. Phillips  
Christina H. Burrow  
Dow, Lohnes & Albertson, PLLC  
Suite 800  
1200 New Hampshire Ave., NW  
Washington, DC 20036  
Attorneys for Comcast  
Cellular Communications, Inc.

Benjamin H. Dickens, Jr.  
Gerard J. Duffy  
Susan J. Bahr  
Blooston, Mordkofsky,  
Jackson & Dickens  
Suite 300  
2120 L Street, NW  
Washington, DC 20037  
Attorneys for CommNet  
Cellular Inc.

Genevieve Morelli  
Competitive Telecommunications  
Association  
Suite 800  
1900 M Street, NW  
Washington, DC 20036

Robert J. Aamoth  
Steven A. Augustino  
Kelley Drye & Warren LLP  
Suite 500  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for Competitive  
Telecommunications Association

Michael J. Shortley, III  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

John F. Raposa  
GTE Service Corporation  
HQE03J27  
600 Hidden Ridge  
Irving, TX 75038

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, NW  
Washington, DC 20036

R. Michael Senkowski  
Michael Yourshaw  
Gregory J. Vogt  
Uzoma Onyeije  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006-2304  
Attorneys for GTE Service  
Corporation

Sylvia Lesse  
Philip Macres  
Kraskin, Lesse & Cosson, LLP  
Suite 520  
2120 L Street, NW  
Washington, DC 20037  
Attorneys for The  
Independent Alliance

Douglas W. Kinkoph  
J. Scott Nicholls  
LCI International  
Telecom Corp.  
Suite 800  
8180 Greensboro Drive  
McLean, VA 22102

Brad E. Mutschelknaus  
Steven a. Augustino  
Kelley Drye & Warren LLP  
Suite 500  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for LCI  
International Telecom Corp.

Frank W. Krogh  
Mary L. Brown  
MCI Telecommunications  
Corporation  
1801 Pennsylvania Ave., NW  
Washington, DC 20006

Frederick M. Joyce  
Christine McLaughlin  
Joyce & Jacobs, LLP  
Fourteenth Floor - PH2  
1019 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for Metrocall, Inc.

L. Marie Guillory  
Jill Canfield  
National Telephone  
Cooperative Association  
2626 Pennsylvania Ave., NW  
Washington, DC 20037

James J. Halpert  
Mark J. O'Connor  
Piper & Marbury LLP  
7<sup>th</sup> Floor  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for Omnipoint  
Communications,

Judith St. Ledger-Roty  
Paul G. Madison  
Kelley Drye & Warren LLP  
Suite 500  
1200 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for Paging  
Network, Inc.

Robert Hoggarth  
Personal Communications  
Industry Association  
Suite 700  
500 Montgomery Street  
Alexandria, VA 22314-1561

William L. Roughton, Jr.  
PrimeCo Personal  
Communications, LP  
Suite 320 South  
601 13<sup>th</sup> Street, NW  
Washington, DC 20005

Frederick M. Joyce  
Christine McLaughlin  
Joyce & Jacobs LLP  
Fourteenth Floor - PH2  
1019 19<sup>th</sup> Street, NW  
Washington, DC 20036  
Attorneys for RAM  
Technologies, Inc.



Robert M. Lynch  
Durward D. Dupre  
Michael J. Zpevak  
Robert J. Gryzmala  
SBC Communications, Inc.  
Room 3532  
One Bell Center  
St. Louis, Missouri 63101

Leon M. Kestenbaum  
Jay C. Keithley  
Michael B. Fingerhut  
Sprint Corporation  
11<sup>th</sup> Floor  
1850 M Street, NW  
Washington, DC 20036

Margot Smiley Humphrey  
Koteen & Naftalin, LLP  
Suite 1000  
1150 Connecticut Ave., NW  
Washington, DC 20036  
Attorney for TDS  
Telecommunications Corporation

Lawrence E. Sarjeant  
Linda Kent  
Keith Townsend  
United States Telephone  
Association  
Suite 600  
1401 H Street, NW  
Washington, DC 20005

Raymond G. Bender, Jr.  
J. G. Harrington  
Dow, Lohnes & Albertson, PLLC  
Suite 800  
1200 New Hampshire Ave., NW  
Washington, DC 20036  
Attorneys for Vanguard Cellular  
Systems, Inc.